

WRIT PETITION NO.255/2003

Shri Pradip Haldankar,
Vaddem, Socorro,
Porvorim, Bardez, Goa. Petitioner.

V/s.

M/s. Petal Engineers Pvt. Ltd.,
Having office at Plot Nos.
237-238, Kundaim Industrial
Estate, Kundaim, Ponda, Goa. Respodents.

Mr. G. Naik, Advocate for the petitioner.

CORAM: F.I. REBELLO, J.

DATE : JUNE 20, 2003.

ORAL ORDER:

The petitioner-workman by the present petition impugns the Award dated 21.1.2003 whereby the Industrial Tribunal though holding that the termination of services amounted to retrenchment, nonetheless, refused to effect reinstatement or any other benefits.

2. A few facts may be set out. The petitioner was employed with the respondent as Turner from 1.3.1994 on wages of Rs.1800/- per month. The employer terminated his services on 3.10.1994. The petitioner raised an industrial dispute. In conciliation proceedings held on 26.10.94 a settlement was arrived at whereby it was agreed to reinstate the petitioner in

service. The petitioner resumed duties on 4.11.94 and worked till 8.11.94. It is the case of the petitioner that from 9.11.94 he was refused employment. The petitioner from 15.11.94 reported for duties, but was refused work by the respondent. The petitioner, through the union, wrote a letter dated 12/11/94 to the Asst. Labour Commissioner, Ponda and set out the facts of refusal of employment by the respondent. Though the Asst. Labour Commissioner summoned both the petitioner-workman and the respondent-Company, the respondent remained absent. To his letter of 13.12.1994 addressed by the petitioner to the respondent, the respondents by their letter dated 18.5.95 informed that the petitioner deserted the services and that respondent had not refused him employment. There is other correspondence which need not be adverted to. Conciliation proceedings ended in failure. The failure report dated 25.6.96 was sent to the appropriate Government, upon which the reference was made to the Industrial Tribunal.

3. In the claim statement filed by the petitioner, he has contended that he had put in continues service of 217 days. It is further contended that he was a workman and his name had been struck off from the muster roll for absence from duty. It is contended that, that amounts to retrenchment under

Section 25F of the Industrial Disputes Act, 1947 and as such, the petitioner was entitled to be reinstated with full back wages and continuity of service.

The Industrial Tribunal gave several opportunities to the employer-respondent. As the employer-respondent did not participate, the proceedings proceeded ex-parte. An Award came to be passed on 29.12.2000. The Tribunal held that the workman had not abandoned the services, but in fact his services had been retrenched. As such, workman was entitled to reinstatement and full back wages and continuity of service. An Award came to be challenged by filing a writ petition, being Writ Petition No.403/2001 before this Court. By Judgment dated 4.10.2002 the petition was allowed and the ex-parte award dated 29.12.2000 was set aside. This Court further directed that the employer should be given opportunity to lead evidence and the matter should be decided on merits.

4. Pursuant to the opportunity given, respondent-employer filed written statement. Stand of the respondent was that the workman was appointed on purely temporary basis as Turner from 1.4.94. The employer had no work order due to recession and since the petitioner had not completed 240 days' service, his

services were terminated from 3.10.94. The settlement dated 26.10.1994 was admitted. The petitioner has contended that he joined duties from 4.11.94 and worked for 4 days. After that period, it is the case of the respondent-employer that from 9.11.94 the workman did not report for duties and remained absent without permission and information and deserted the services of the respondent. Rest of the averments need not be adverted to.

The Industrial Tribunal while recording its findings held that the petitioner herein had not abandoned his services, but services had been terminated and that the termination amounts to retrenchment. The Industrial Tribunal, however, in para 14 of its Award noted while answering issue No.2 that the petitioner had put in 221 days of continuous service. The stand of the petitioner himself is that he had worked for 217 days of uninterrupted service. The learned Tribunal, therefore, held that the workman had not put in 240 days' continuous service and that being the case, relying on the Judgment of the Apex Court held that the provision of Section 25F was not attracted and consequently, the workman was not entitled to reinstatement and back wages.

5. At the hearing of the petition, on behalf

of the petitioner, reliance is placed on the Judgment of Central Bank of India v. S.Satyam and ors., 1996(2) LLJ 820. The Apex Court therein was considering the true scope and effect of Section 25-H of the I.D. Act. Section 25-H provides for re-employment of retrenched workmen in preference over other workman. It was urged before this Court that Section 25-H could apply only to those cases where the services of workmen were terminated under Section 25F. The Apex Court, after noting the definition of "retrenchment" held that Section 25-H was not only applicable to the workmen whose services were terminated under Section 25F, but also to those who would fall within the definition of Section 2(oo). This Judgment can be of no assistance in so far as the petitioner is concerned.

In the instant case, admittedly, based on the petitioner's own averments in his claim statement and the finding recorded by the Tribunal, the workman had not put in 240 days of continuous service. If that be the case, though it amounts to retrenchment, nonetheless the Tribunal found that Section 28-F was not attracted. Once that be the case, even though the Tribunal held that the petitioner had not abandoned the services, but on the contrary, that termination amounted to retrenchment, however, was right in not granting reinstatement and back wages and continuity of

service.

For the aforesaid reasons, there is no merit in the petition. In the light of that, petition dismissed.

F.I. REBELLO, J.